

Honorable Marsha J. Pechman
United States District Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEREK STENSON, as Personal Representative of)
the Estate of Joshua Ross Garrett, deceased,)

Plaintiffs,)

No. 2:23-cv-01316-MJP

vs.)

) STIPULATED PROTECTIVE ORDER

KING COUNTY, a Washington State Government)
entity, and JACOB LEENSTRA and JANE DOE)
LEENSTRA, individually and the marital)
community comprised thereof, and DOES 1-10)
inclusive,)

Defendants.)

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, statutorily protected, or private information, or other material which is exempt from public disclosure or for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

STIPULATED PROTECTIVE ORDER (2:23-cv-01316-MJP) - 1

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1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents, electronically
3 stored information (ESI) and tangible things produced or otherwise exchanged:

- 4 a. Non-public records such as King County employee personnel files, including
5 performance evaluations protected RCW 42.56.210;
- 6 b. Non-public records such as King County employee employment applications,
7 protected by RCW 42.56.250;
- 8 c. Any other information normally exempt from public disclosure that is relevant to
9 this case (such as personnel records, records containing protected personal
10 information, and law enforcement records for ongoing investigations);
- 11 d. The medical records of the deceased, Joshua Ross Sarrett;
- 12 e. Juvenile prosecution records, except for information in the publicly available court
13 record, and
- 14 f. Autopsy photographs, autopsy reports, and scene photographs of Joshua Sarrett.

15 3. SCOPE

16 The protections conferred by this agreement cover not only confidential material
17 (as defined above), but also (1) any information copied or extracted from confidential
18 material; (2) all copies, excerpts, summaries, or compilations of confidential material;
19 and (3) any testimony, conversations, or presentations by parties or their counsel that
20 might reveal confidential material.

21 However, the protections conferred by this agreement do not cover information
22 that is in the public domain or becomes part of the public domain through trial or
23 otherwise.

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26 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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1 4.1 Basic Principles. A receiving party may use confidential material that is
2 disclosed or produced by another party or by a non-party in connection with this case
3 only for prosecuting, defending, or attempting to settle this litigation. Confidential
4 material may be disclosed only to the categories of persons and under the conditions
5 described in this agreement. Confidential material must be stored and maintained by a
6 receiving party at a location and in a secure manner that ensures that access is limited to
7 the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the designating party, a receiving party
10 may disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as
12 employees of counsel to whom it is reasonably necessary to disclose the information for
13 this litigation;

14 (b) the officers, directors, and employees (including in-house counsel)
15 of the receiving party to whom disclosure is reasonably necessary for this litigation,
16 unless the parties agree that a particular document or material produced is for
17 Attorney’s Eyes Only and is so designated;

18 (c) experts and consultants to whom disclosure is reasonably
19 necessary for this litigation and who have signed the “Acknowledgment and
20 Agreement to Be Bound” (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the
23 duplication of confidential material, provided that counsel for the party retaining the
24 copy or imaging service instructs the service not to disclose any confidential material to
25 third parties and to immediately return all originals and copies of any confidential
26 material;

11 4.3 Filing Confidential Material. Before filing confidential material or
12 discussing or referencing such material in court filings, the filing party shall confer with
13 the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine
14 whether the designating party will remove the confidential designation, whether the
15 document can be redacted, or whether a motion to seal or stipulation and proposed
16 order is warranted. During the meet and confer process, the designating party must
17 identify the basis for sealing the specific confidential information at issue, and the filing
18 party shall include this basis in its motion to seal, along with any objection to sealing
19 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
20 followed and the standards that will be applied when a party seeks permission from the
21 court to file material under seal. A party who seeks to maintain the confidentiality of its
22 information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not
23 the party filing the motion to seal. Failure to satisfy this requirement will result in the
24 motion to seal being denied, in accordance with the strong presumption of public access
25 to the Court's files.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
 3 party or non-party that designates information or items for protection under this
 4 agreement must take care to limit any such designation to specific material that
 5 qualifies under the appropriate standards. The designating party must designate for
 6 protection only those parts of material, documents, items, or oral or written
 7 communications that qualify, so that other portions of the material, documents, items,
 8 or communications for which protection is not warranted are not swept unjustifiably
 9 within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
 11 that are shown to be clearly unjustified or that have been made for an improper
 12 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to
 13 impose unnecessary expenses and burdens on other parties) expose the designating
 14 party to sanctions.

15 If it comes to a designating party's attention that information or items that it
 16 designated for protection do not qualify for protection, the designating party must
 17 promptly notify all other parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 19 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
 20 stipulated or ordered, disclosure or discovery material that qualifies for protection
 21 under this agreement must be clearly so designated before or when the material is
 22 disclosed or produced.

23 (a) Information in documentary form: (*e.g.*, paper or electronic
 24 documents and deposition exhibits, but excluding transcripts of depositions or other
 25 pretrial or trial proceedings), the designating party must affix the word
 26 "CONFIDENTIAL" to each page that contains confidential material. If only a portion or
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1 portions of the material on a page qualifies for protection, the producing party also
 2 must clearly identify the protected portion(s) (e.g., by making appropriate markings in
 3 the margins).

4 (b) Testimony given in deposition or in other pretrial proceedings: the
 5 parties and any participating non-parties must identify on the record, during the
 6 deposition or other pretrial proceeding, all protected testimony, without prejudice to
 7 their right to so designate other testimony after reviewing the transcript. Any party or
 8 non-party may, within fifteen days after receiving the transcript of the deposition or
 9 other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
 10 confidential. If a party or non-party desires to protect confidential information at trial,
 11 the issue should be addressed during the pre-trial conference.

12 (c) Other tangible items: the producing party must affix in a prominent
 13 place on the exterior of the container or containers in which the information or item is
 14 stored the word "CONFIDENTIAL." If only a portion or portions of the information or
 15 item warrant protection, the producing party, to the extent practicable, shall identify the
 16 protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 18 failure to designate qualified information or items does not, standing alone, waive the
 19 designating party's right to secure protection under this agreement for such material.
 20 Upon timely correction of a designation, the receiving party must make reasonable
 21 efforts to ensure that the material is treated in accordance with the provisions of this
 22 agreement.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any party or non-party may challenge a
 25 designation of confidentiality at any time. Unless a prompt challenge to a designating
 26 party's confidentiality designation is necessary to avoid foreseeable, substantial
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1 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
 2 litigation, a party does not waive its right to challenge a confidentiality designation by
 3 electing not to mount a challenge promptly after the original designation is disclosed.

4 6.2 Meet and Confer. The parties must make every attempt to resolve any
 5 dispute regarding confidential designations without court involvement. Any motion
 6 regarding confidential designations or for a protective order must include a
 7 certification, in the motion or in a declaration or affidavit, that the movant has engaged
 8 in a good faith meet and confer conference with other affected parties in an effort to
 9 resolve the dispute without court action. The certification must list the date, manner,
 10 and participants to the conference. A good faith effort to confer requires a face-to-face
 11 meeting or a telephone conference.

12 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
 13 court intervention, the designating party may file and serve a motion to retain
 14 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if
 15 applicable). The burden of persuasion in any such motion shall be on the designating
 16 party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or
 17 impose unnecessary expenses and burdens on other parties) may expose the
 18 challenging party to sanctions. All parties shall continue to maintain the material in
 19 question as confidential until the court rules on the challenge.

20 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 21 OTHER LITIGATION

22 If a party is served with a subpoena or a court order issued in other litigation that
 23 compels disclosure of any information or items designated in this action as
 24 "CONFIDENTIAL," that party must:

25 (a) promptly notify the designating party in writing and include a
 26 copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a credible claim of privilege or other protection, the party shall promptly return the document in accordance with the parties' stipulated Fed. R. Evid. 502(d) Order.

10. NON-TERMINATION AND DESTRUCTION OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must destroy all confidential material from the producing party, including all copies, extracts and summaries thereof.

1 Notwithstanding this provision, counsel are entitled to retain one archival copy
2 of all documents filed with the court; trial, deposition, and hearing transcripts;
3 correspondence; deposition and trial exhibits; expert reports; attorney work product;
4 and consultant and expert work product, even if such materials contain confidential
5 material.

6 Any party may request that another party confirm in writing that they have
7 complied with this provision, 60 days or more after the termination of this action.

8 The confidentiality obligations imposed by this agreement shall remain in effect
9 until a designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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4 DATED this 21st day of November, 2023.
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LEESA MANION (she/her),
King County Prosecuting Attorney



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14 ROBERT C. IDDINS, WSBA #37177
CHRISTIAN C. PEARSON, WSBA #55534
15 Attorneys for Plaintiff
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In accordance with the parties' stipulation, IT IS SO ORDERED.

DATED: November 22, 2023



18 HONORABLE MARSHA J. PECHMAN
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STIPULATED PROTECTIVE ORDER (2:23-cv-01316-MJP) - 10

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on ____ in the case of *Derek Stenson, as Personal Representative of the Estate of Joshua Ross Sarrett. v. King County, et al.* United States District Court; Cause No. 23-cv-01316-MJP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

Signature: _____

Printed name: _____